

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION**

**MDL No. 2419  
Dkt. No 1:13-md-2419 (RWZ)**

**THIS DOCUMENT RELATES TO:**

**All Cases**

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**EMERGENCY MOTION TO COMPEL SUPPLEMENTATION OF PLAINTIFFS'  
STEERING COMMITTEE'S RULE 26 EXPERT REPORTS**

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Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John Culclasure, MD; Debra Schamberg, RN, CNOR; and Vaughan Allen, MD (collectively "STOPNC Defendants"), come now and move this Court to enter an Order compelling the Plaintiffs' Steering Committee ("PSC") to immediately supplement the Rule 26 Expert Reports to identify all materials considered by the experts with sufficient detail to permit the Tennessee Clinic Defendants to locate and review the information.

On December 16, 2015, the PSC disclosed ten (10) Rule 26 "Common" Expert Witnesses and served their corresponding expert reports.<sup>1</sup> The reports fall short of the requirement imposed by Fed. R. Civ. P. 26(a)(2)(B)(ii) that an expert's report disclose "the facts or data considered by the witness in forming" his or her opinion.

Pursuant to LR 37.1, the parties exchanged emails in an attempt to narrow the issues in what was ultimately a failed "meet and confer" process, as the PSC has yet to produce supplemental disclosures, information required in the first instance by Fed. R.

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<sup>1</sup> Doc. 2516.

Civ. P. 26(a)(2)(B)(ii). Failing initial compliance, supplementation was required in a timely fashion given the STOPNC Defendants' request and the defense's impending deadline for expert disclosure of January 15, 2016.

The STOPNC Defendants file this Motion on an emergent basis due to the upcoming deadlines governing common expert discovery. The STOPNC Defendants' expert reports are due January 15, 2016, with the PSC's reply expert reports due on January 29, 2016, and common expert discovery closing on February 19, 2016. Ideally, the PSC would provide the STOPNC Defendants with the requested supplemental information prior to January 15, 2016. Given the impending discovery deadlines, this dispute must be resolved as soon as possible.

The STOPNC Defendants respectfully suggest that the PSC's response to this motion be due on January 13, 2016, and oral argument on this motion be heard at the hearing before Magistrate Judge Boal on January 14, 2016.

Respectfully submitted,

**GIDEON, COOPER & ESSARY, PLC**

/s/ Chris J. Tardio

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\* Admitted pursuant to MDL Order No. 1.

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 6<sup>th</sup> day of January, 2016.

/s/ Chris J. Tardio

**Chris. J. Tardio**